

REMARKS/ARGUMENTS

The Examiner is thanked for the clarity and conciseness of the previous Final Office Action.

This Amendment is in response to the Final Office Action mailed August 28, 2003. In the Office Action, the Examiner rejected claims 1, 3-6, 9, 11, and 13-16 under 35 U.S.C. § 102, and claims 7-8 and 17-18 under 35 U.S.C. § 103.

Claims 3, 6, 7, 13, 16, and 17 have been canceled, without prejudice. Applicant has amended independent claims 1, 9, and 11. Accordingly, claims 1, 4, 5, 8-11, 14, 15 and 18 are pending.

Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Rejection Under 35 U.S.C. § 103

The Final Office Action rejected claims 7-8 and 17-18 under 35 U.S.C. § 103(a) as being allegedly obvious over U.S. Patent No. 6,441, 931 issued to Moskovich (hereinafter Moskovich) in combination with U.S. Patent No. 5,953,340 issued to Scott (hereinafter Scott). Applicant has amended independent claims 1, 9, and 11 to include the claim limitations related to those of dependent claims 7 and 17.

Applicant respectfully submits that amended independent claims 1, 9, and 11 are allowable because the Office Actions' obviousness rejections of dependent claims 7 and 17 (these limitations now being included in amended independent claims 1, 9, and 11) were based upon the primary reference Moskovich.

Applicant respectfully submits that Moskovich is not a valid prior art reference for obviousness purposes. The Office Action uses Moskovich as a prior art reference under 35 U.S.C. § 103(a). However, 35 U.S.C. § 103(c) excludes references which may qualify as prior

art under 35 U.S.C. § 102(e), (f), and (g) from being used as a prior art reference under 35 U.S.C. § 103(a). The text of 35 U.S.C. § 103(c) recites "Subject matter developed by another person, which qualifies as prior art under one or more of subsections (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." [See 35 U.S.C. §103(c), MPEP 706.02(I)(1), 37 CFR §1.104(c)(4)].

The subject matter of Moskovich and the claimed present invention were, at the time the invention was made, owned by or subject to an obligation of assignment to Nortel Networks. Furthermore, Moskovich was filed on June 30, 1998 and issued on August 27, 2002 while the above referenced patent application was filed on December 21st, 1999.

Therefore, Moskovich is not a valid prior art reference and does not render obvious Applicant's amended independent claims 1, 9, and 11. Applicant respectfully requests the withdrawal of the 35 U.S.C § 103(a) rejections and requests that amended independent claims 1, 9, and 11 be allowed and passed to issuance. Further, the dependent claims are allowable for being based on allowable independent claims.

Conclusion

In view of the remarks made above, it is respectfully submitted that pending claims 1, 4, 5, 8-11, 14, 15 and 18 define the subject invention over the prior art of record. Thus, Applicant respectfully submits that all the pending claims are in condition for allowance, and such action is earnestly solicited at the earliest possible date. The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application. To the extent necessary, a petition for an extension of time under 37 C.F.R. is hereby made. Please charge any shortage in fees in connection with the filing of this paper, including extension of time fees, to Deposit Account 02-2666 and please credit any excess fees to such account.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 10/23/2003

By


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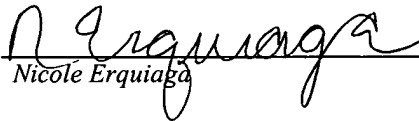
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10/23/2003

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